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6 BEFORE THE INSURANCE COMMISSIONER
7 OF THE STATE OF WASHINGTON
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10 In the Matter of the Application regarding the
11 Conversion and Acquisition of Control of
12 Premera Blue Cross and its Affiliates

No. G02-45

SUPPLEMENTAL FILING TO
WASHINGTON STATE MEDICAL
ASSOCIATION'S MOTION TO
INTERVENE

13 I. INTRODUCTION
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15 Premera Blue Cross and its affiliates, collectively known as PREMERA, are attempting
16 to become a for-profit corporation.

17 The Washington State Medical Association ("WSMA") opposes this attempt because of
18 the threat it represents to patient care.

19 PREMERA cannot convert to a for-profit company without the approval of the
20 Washington State Office of the Insurance Commissioner ("OIC"). The Commissioner is now
21 reviewing PREMERA's request.
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1 To ensure that patient care issues are thoroughly explored in this process, the WSMA
2 asked to be granted Intervener status in a Motion to Intervene it filed with the OIC on October
3 14, 2002.

4 The WSMA hereby supplements its Motion to Intervene with a more detailed account of
5 what the organization offers the OIC as it makes its determination.

6
7 II. THE WSMA HAS A SIGNIFICANT INTEREST
8 IN PREMIER'S CONVERSION

9 The OIC is conducting its review pursuant to the Insurer Holding Company Act and the
10 Holding Company Act for Domestic Health Carriers, Chapters 48.31B and 48.31C RCW.¹

11 The Acts authorize "any person whose significant interest is determined by the
12 commissioner to be affected" by the transaction to participate as a party in the proceedings.
13 RCW 48.31C.030(4); 48.31B.015(4)(b).

14 The Commissioner is requested to find that: 1) The WSMA has a significant interest in
15 PREMIER's proposed transaction and that 2) The WSMA be permitted full participation in the
16 proceedings, including full rights to conduct discovery, present evidence, and examine and cross-
17 examine witnesses.

18 Neither the statute nor the regulation issued to implement it defines what constitutes a
19 "significant interest." There does not appear to be any case law on point either.

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¹ The WSMA continues to reserve its right to object to the conversion at a later date based on the lack of explicit
23 authority for a domestic health care service contractor such as PREMIER to convert from non-profit to for-profit.

1 The WSMA “significant interest” in the PREMERA transaction is clear: its paramount
2 mission is to promote the interests of patients and the physicians who treat them.

3 No survey exists showing how many WSMA members are Premera Blue Cross
4 providers. With three-fourths of active physicians as members, WSMA presumably represents
5 approximately the same percentage of all physicians with whom Premera contracts.

6 Given Premera’s large market share, and dominance in most of the eastern part of the
7 state, Premera is one of the most important payers for the services of WSMA physicians.

8 WSMA physicians have over the years treated a vast number of Premera subscribers.
9 That care has in turn generated a vast amount of claims submitted by WSMA physicians, the
10 total value of which runs into the billions of dollars.

11
12 III. THE LAW, AND COMMON SENSE, DICTATES THAT HEALTH CARE BE A PART OF ANY
13 REVIEW OF A HEALTH CARRIER’S ATTEMPT TO BECOME FOR-PROFIT

14 The importance of health care is expressly recognized in the statute. For example, it
15 allows the Commissioner to approve the acquisition of a foreign health carrier *even when*
16 *procedural requirements are violated* if the “acquisition will substantially increase the
17 availability of health care coverage [.]” RCW 48.31C.020(5)(a)(B)(II).

18 Similarly, the acquisition of a domestic health carrier may be permitted despite
19 procedural and anti-trust concerns if the “acquisition will substantially increase or will prevent
20 significant deterioration in the availability of health care coverage [.]” RCW
21 48.31C.030(5)(a)(B)(II).

22 The importance of health care can also be inferred from the statute’s many references to
23 the “public interest.” The sale, liquidation, or merger of assets, for example, may be disallowed if

1 “not in the public interest” and the disclosure of confidential or proprietary information may
2 occur, after due process, if the Commissioner “determines that the interest of . . . the public will
3 be served.” RCW 48.31C.030 (5)(a)(C)(II) and RCW 48.31C.130 respectively.

4 It is hard to imagine, when evaluating the acquisition of a health carrier, that “the public
5 interest” would overlook the public’s health.

6 Common sense suggests that a major concern of any move by a health insurer should be
7 its impact on health care.

8 This concern is especially compelling here, where the company is immense, the number
9 of lives involved is enormous, and the consequences may be irreversible.

10 There is simply no other action likely to have more influence on health care in the State
11 of Washington than if profit were allowed to become PREMERA’s first priority.

12 Who receives care, who provides it, how good the care is, and how much it costs are but
13 a few of the ways that the health delivery system would be affected by PREMERA’s move.

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15 IV. THE WSMA OFFERS UNMATCHED INSIGHT INTO HEALTH CARE,
16 PREMERA’S BUSINESS PRACTICES

17 No other group is in a better position to evaluate patient care than the physicians who
18 provide the care.

19 As the WSMA pointed out in its original petition, its 8,800 members:

- 20 1. Represent approximately 75% of all active physicians involved in direct patient care in
21 the state
22 2. Practice in every medical specialty
23

1 3. Care for hundreds of thousands of Washingtonians every year

2 4. Live and work in all thirty-nine of the state's counties

3
4 WSMA Motion to Intervene, p. 6.

5 No other medical group, indeed no group of any kind, is so familiar with the health care
6 needs of our state.

7 Excluding the WSMA from full participation as a party would diminish the review
8 process.

9 Neither the OIC nor the Attorney General's Office has, or could be expected to have, the
10 training and experience in the health care system that comes from treating thousands of patients
11 on a daily basis.

12 Such expertise cannot be readily hired either. The OIC has assembled a distinguished
13 group of experts in investment banking, accounting, actuarial, legal, and tax matters. But none
14 has been retained in health care.

15 The absence of such expertise might mean that only part of the picture is brought into
16 focus. With all due respect, no matter how well-intentioned the OIC staff and outside
17 consultants are, they cannot act as surrogates for the depth and breadth of the expertise that the
18 WSMA possesses.

19 The review is still in its early stages, and the WSMA has not had the advantage of seeing
20 the complete record, yet even with these limitations it can identify an instance where it appears
21 that the organization could have added great value.

1 One of the law firms analyzing the proposal on the OIC's behalf served extensive
2 questions on PREMERA. Included were inquiries into the carrier's claims and underwriting
3 practices. Cantilo & Bennett Data Request dated October 22, 2002, pp.10 –12.

4 Answers to those questions would give an excellent picture of the financial dimensions of
5 PREMERA's practices, but insufficient insight into what they mean for the delivery of health
6 care.

7 The WSMA could present evidence about how Premera Blue Cross's claims and
8 underwriting practices have affected how much physician time is spent with patients, how much
9 physician time is diverted from patient care to obtain referrals and authorizations, and how
10 needless administrative barriers prevent payment of claims in a fair and timely manner, to name
11 but a few areas of concern.

12 Claims practices alone raise critical public health issues. PREMERA has as its stated goal
13 in converting to double or triple its operating margin. See, i.e., PREMERA Conversion Fact
14 Sheet, Premera Blue Cross Web site.

15 The cost of claims is by far its biggest expense; health care expenses consumed 84% of
16 premium and fee revenue last year, according to the company's 2001 Annual Report. It stands to
17 reason that PREMERA will target claims for cost reductions to achieve its goal.

18 With full powers of discovery, the WSMA could find out whether PREMERA plans, if it
19 successfully converts, to: increase premiums, reduce prescription drug benefits, reduce physician
20 reimbursement, drop coverage for the sickest or poorest patients, or set itself up for acquisition
21 by an out-of-state carrier.

1 To get the answers to these and other crucial questions, the WSMA needs the ability to
2 compel PREMERA to respond to interrogatories, to take depositions of senior company
3 executives, and to examine and cross-examine company witnesses in an adjudicative hearing.

4 The enormous advantage of discovery and the adjudicative hearing is that the answers
5 must be sworn to be true, in contrast to the press releases and presentations at forums the public
6 has heard thus far from PREMERA.

7 Even in the Form A filing PREMERA can, and has, put its gloss on the information
8 provided. They will attempt to do so in discovery as well, but it is harder to sustain under close
9 questioning.

10 The questions cannot be posed by anyone. Like the actuarial or tax data being gathered,
11 the health claims and coverage data are the product of a complex web of law and industry
12 practice that must be understood first before one can know where to look and what to seek.

13 Even if others were furnished the questions to ask, those who have been on the receiving
14 end of PREMERA's practices are in the best position to judge the credibility and completeness
15 of the company's responses.

16 The WSMA is also in the best position to assess the health care consequences of the
17 information obtained in discovery.

18 Physician reimbursement rates vividly illustrate the point. They are not merely a matter
19 of parochial interest. Instead, inadequate reimbursement is directly connected to a growing threat
20 in our state: the economic viability of medical practices and physician flight.

21 Experienced physicians are retiring early. New physicians are harder to recruit. Physician
22 practices are closing. All in record numbers. See WSMA Motion to Intervene, p.5.

1 If these trends continue, the threat will develop into an even larger problem: fewer
2 Washingtonians will have access to care. Those who have access will have more trouble
3 affording it.

4 Extracting information is thus only part of the task; interpreting it correctly is just as
5 essential. Evidence that PREMERA might withdraw from the Basic Health Plan or Healthy
6 Options, programs that serve our poorest citizens, would have significance far beyond those who
7 would be forced to seek alternative coverage.

8 Many people wouldn't be able to find coverage. They would typically wait longer to get
9 medical attention and inundate emergency rooms to obtain even the most rudimentary care,
10 thereby driving up costs and straining the system further.

11 The scenario could get much worse: PREMERA's withdrawal from these low-margin
12 markets could compel its competitors to follow suit. They could not realistically be expected to
13 absorb so many impecunious members. The competitors would then be forced to withdraw from
14 the programs and the main vehicle by which the poor receive medical care in Washington could
15 collapse.

16 This scenario is not purely speculative. WSMA members were on the front lines when
17 Premera Blue Cross announced its withdrawal from the individual market in November, 1998.
18 Premera's withdrawal from a market it had long dominated meant that individuals flocked in
19 droves to the remaining carriers offering such coverage.

20 Soon Group Health and Regence announced that they could no longer afford to issue new
21 policies to individuals, and the market collapsed.

1 WSMA members can attest to what happened to primary and emergency care in the wake
2 of the individual market's collapse. They can also attest to the disruptions in care in the wake of
3 Premera's acquisition of MSC in Eastern Washington, or how Premera has used its market
4 power to force physicians to accept unfavorable contracts that leave even the determination of
5 what is medically necessary for a patient largely in the insurance company's hands.

6 Intimate knowledge of PREMERA's past and current practices enables the WSMA to
7 raise the right questions about the company's conversion plans and to evaluate its responses.

8
9 V. THE WSMA WILL ENHANCE, NOT IMPEDE,
10 THE REGULATORY REVIEW PROCESS

11 Granting WSMA Intervener status, with full discovery rights, will not unduly delay or
12 burden the review process.

13 There should be relatively little duplication of existing efforts, as the WSMA will focus
14 on the conversion's impact on health care.

15 That focus would include, for example, the creation and management of the proposed
16 foundation,² but the WSMA does not contemplate investigating other elements of the conversion,
17 such as:

18 Alaska
19 Information Technology unrelated to claims, provider issues
20 Intellectual Property
21 Investment Operations except as related to senior executive compensation
22 Life Insurance Companies (States West and MSC Life)
23 Personnel (other than senior management)
Reinsurance

² For other examples of areas of interest to the WSMA, see WSMA Motion to Intervene, pp. 10 – 12.

1 Taxes other than premium taxes

2 The WSMA is willing to confine its role as a party where there is no arguable health care
3 interest at stake.

4 Moreover, as an organization that has been devoted to the study and improvement of the
5 state's health care system for its entire 110-year existence, the WSMA can efficiently carry out
6 its rights, and fulfill its responsibilities, under the Holding Company Acts and the Administrative
7 Procedure Act.

8 Thus, the WSMA will help make the review process effective without making it
9 inefficient.

10 Whatever modest delay might result from granting the WSMA full participation is more
11 than outweighed by the public interest in ensuring that its expertise is used to examine
12 completely and accurately the health care consequences of PREMERA's proposed conversion.

14 VI. CONCLUSION

15 The Washington State Medical Association has a significant interest in PREMERA's
16 attempted conversion to a for-profit health carrier.

17 The knowledge and experience in the health care system that the WSMA offers will help
18 protect the public's interest in the review of PREMERA's proposal, while not unduly delaying or
19 burdening the process.

20 Thus, the WSMA respectfully requests that the Insurance Commissioner grant it
21 Intervener status in all proceedings related to the PREMERA conversion review process, with
22 full powers as a party pursuant to Chapters 48.04, 48.31B, 48.31C, and 34.05 RCW.

1 Dated this ____ day of November, 2002.

2
3 Respectfully Submitted by:

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1 PROOF OF SERVICE

2 I certify that I served a copy of this document on all parties or their counsel of record on
3 the date below as follows:

4 ____ US Mail Postage Prepaid

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7 I certify under penalty of perjury under the laws of the State of Washington that the
8 foregoing is true and correct.

9 DATED this ____ day of November, 2002, at _____, Wa.

10
11 _____
12 James Odiorne
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2 I certify that I served the original and twelve copies of this document on the Office of the
3 Insurance Commissioner, by hand, on the date below:

4 I certify under penalty of perjury under the laws of the State of Washington that the
5 foregoing is true and correct.

6 DATED this _____ day of November, 2002, at _____, Wa.

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